IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 1638 OF 2007

Shri Jagdish Hukumchand Agarwal

&Ors. ... Petitioners

Versus

Mrs. Sitabai Dyneshwar Kharade & Ors. Respondents

Mr. Anturkar, Advocate i/b. Mr.Sugandh Deshmukh, Advocate for the petitioners.

Mr. Khandeparkar, Advocate, i/b. M/s. Khandeparkar & Associates, Advocates for the Respondents.

CORAM: J.H.BHATIA,J.

DATE: 19th October,2007.

P.C.

1. Heard learned Counsel for the parties.

2. One Sitabai had filed a Civil Suit against one Sahebrao for partition and separate possession. That suit was decreed. Execution of that decree is pending. The present petitioners claim to have purchased the property in dispute from Sahebrao, who is no more. The petitioners filed Regular Civil Suit No.74 of 2004 and also moved an application for temporary injunction restraining the decree holder from taking possession of the suit property from them. The application came to be rejected on the ground that the suit was not tenable and the remedy lies in filing objection in the execution. Misc. Civil Appeal No.133 of 2005 was filed by the petitioners against that order. The appeal is also dismissed on the ground that the person who had purchased the property pending that suit cannot file a separate suit and the remedy is in filing objection under Order XXI Rule 97 of the C.P.C. Against the dismissal of the Appeal, the petitioners have preferred the present petition.

3. The matter is fully covered by a Judgment of the Supreme Court in the case of **Central Board of Direct Taxes, New Delhi and Ors. vs. Oberoi Hotels (India) Pvt.Ltd. (1998) 4 SCC 552 and in the case of Prasanta Banerji vs. Pushpa Ashoke Chandani and Ors. (2002) 9 SCC 554.** In these authorities, the Supreme Court held that when the suit is filed after initiation of the

execution proceedings it is not maintainable and the remedy lies in taking objection in execution proceedings under Order XXI Rule 97 of the C.P.C. Therefore, I find no fault with the impugned order. However, in view of the fact that the petitioners claimed to have purchased the property from Sahebrao, they shall be at liberty to intervene in the execution proceedings and take all such objections as may be available to them under law.

Petition stands disposed of.

(J.H.BHATIA,J.)